

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

Appeal No.: A-5-NPB-19-0003

Applicant: City of Newport Beach

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: James Mosher
Commissioner Donne Brownsey
Commissioner Steve Padilla

Project Location: Finley Tract: Finley Ave., Clubhouse Ave., Short St. and the 500-600 blocks of 34th, 35th, and 36th Streets on Balboa Peninsula, Newport Beach

Project Description: Appeal of City of Newport Beach Local Coastal Development Permit No. CD2018-102 for establishment of a resident parking permit program (RP3), restricting parking on public streets within the residentially zoned Finley Tract on Balboa Peninsula to “No Parking Anytime Except by Permit.”

Staff Recommendation: Determine that a substantial issue exists.

IMPORTANT HEARING PROCEDURE NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local

government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The City's action on Local CDP No. CD2018-102 approved the creation of RP3, a resident parking permit program for the Finley Tract (RP3) on Balboa Peninsula restricting parking on public streets to "No Parking Anytime Except by Permit."

The Finley Tract is a triangle-shaped area bound by Newport Blvd., a commercial street providing visitor-serving commercial uses, and Rivo Alto and Rialto, two channels providing access to Newport Bay waterfront and waterways. Public access to the waterfront is available at eight (8) street ends within the Finley Tract, providing both visual and physical public access to Newport Bay. Additionally, there are public leased shore moorings located in the bay channels at three of these public street-ends. The nearest public access to the ocean and public beaches is available nearby, less than a quarter mile south of the Finley Tract at the 32nd Street end.

This residential neighborhood has approximately 102 on-street parking spaces. It is located westward and adjacent to visitor-serving retail shops and restaurants on Newport Blvd. and the commercial areas of the Lido Marina Village, Via Lido Plaza and the Lido House Hotel. The general perception as described in the City's staff report is that recent renovations have revitalized the Lido Marina Village commercial area; and that this renewed public interest in the visitor-serving commercial area has increased parking demands on the nearby residential public streets. However, City parking occupancy surveys demonstrated that the very high parking occupancy rates in this neighborhood is from resident vehicles and not caused by non-resident vehicles.

Two appeals were filed, one by Mr. James Mosher and one by Commissioners Brownsey and Padilla, both contending that the City's approval is inconsistent with LUP Policy 3.1.6-1 which states, "*Prohibit the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.*" Both appeals contend that the proposed Finley Tract RP3 will reduce the public's ability to access the coast and coastal resources by restricting the use of free public parking currently provided on public streets. The City imposed five special conditions to ensure no direct impact to public access and to find the proposed RP3 consistent with LCP requirements, which include proving a single, short-term (one or three hours) parking space to remain available to the general public at six locations at street ends with harbor channel access and limiting the RP3 to 18-months to allow for monitoring of any impacts to public access with a six-month review report to determine if impacts have occurred and allow for program modifications. However, the Commission contends that these special conditions are not sufficient to ensure that the RP3 would not have a direct impact on coastal access, including the ability to use public parking. The proposed RP3 parking restriction of "No Parking Anytime,

Except by Permit” is the most prohibitive parking restriction and would effectively exclude the public from access to all but six of the approximately 100 parking spaces on public streets adjacent to visitor-serving commercial areas and adjacent to Newport Bay channel waterways. Thus, the program would take away the public’s ability to use nearly 95% of the on-street public parking, in direct conflict with LUP Policy 3.1.6-1.

Furthermore, the appellants also argue that the proposed RP3 is inconsistent with IP Section 21.30A.050(E)(2) prohibiting restrictions on public parking, except where there is substantial evidence of a public safety problem; and IP Section 21.30A.050(E)(3) which protects existing public parking that supports public access and requires any development that results in a reduction of public parking supporting public access to provide an equivalent quantity of public parking nearby as mitigation.

First, the City did not provide evidence of a public safety problem and, in fact, the City acknowledges in their staff report that there are no public safety issues in this case, as required by IP Section 21.30A.050(E)(2). Second, IP Section 21.30A.050(E)(3) requires protection of existing public parking supporting public access. However, general parking occupancy surveys conducted by the City indicate that while overall occupancy ranged between 92% and 125% , which is high, those high numbers are mainly due to local residents parking on-street and not due to a high number of non-residents parking (at its peak, only 20 non-resident vehicles were parked in the area during the evening hours, and far fewer were identified during the morning). In addition, 192 dwelling units are located in the Finley Tract, making available a maximum of three preferential permits per household (as approved by the City), which would result in a maximum of 576 permits available to residents for use of the approximately 102 parking spaces. Therefore, the establishment of a preferential parking district with a “No Parking, Anytime, Except by Permit” restriction would do little to alleviate the current use of on-street parking by residents but would greatly impact the availability of existing public parking supporting public access to the Newport Bay waterfront in the neighborhood and supporting public access to the nearby visitor-serving commercial area.

Therefore, staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which appeal number A-5-NPB-19-0003 has been filed for the following reasons: the City’s decision that the development is consistent with the provisions for public access of the LCP was not adequately supported by documents in the record file or the Local CDP’s findings.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE.....5
II. APPELLANT’S CONTENTIONS.....5
III. LOCAL GOVERNMENT ACTION6
IV. APPEAL PROCEDURES.....7
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE.....8
 A. PROJECT DESCRIPTION AND LOCATION.....8
 B. LOCAL COASTAL PROGRAM CERTIFICATION.....9
 C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS9
 D. SUBSTANTIAL ISSUE ANALYSIS.....10

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Appeal

Exhibit 3 – Local CDP No. CD2018-102 City Zoning Administrator Staff Report and Exhibits

Exhibit 4 – City Zoning Administrator Resolution No. ZA2018-136

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: *I move that the Commission determine that Appeal No. A-5-NPB-19-0003 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. A-5-NPB-19-0003 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Newport Beach Local Coastal Development Permit (CDP) No. CD2018-102 on January 8, 2019. Local CDP No. CD2018-102 approves the establishment of the Finley Tract Resident Parking Permit Program (RP3) and changes day and night-time on-street parking to “No Parking Anytime, Except by Permit.”

On January 23, 2019, two appeals were filed, one by Mr. James Mosher and one by Commissioners Brownsey and Padilla (**Exhibit 3**). Both Mr. Mosher and the Commissioners contend that the City’s approval does not comply with the certified LCP; specifically, raising the following concerns:

- 1) LCP amendment may be required to incorporate resident parking permit program standards in the IP portion of the LCP.
- 2) Inconsistency with LUP Policy 3.1.6-1, which prohibits the establishment of new “preferential parking districts” in the coastal zone “except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.”
- 3) Inconsistency with IP Section 21.30A.050(E)(2), which prohibits restrictions on public parking except when there is evidence of a public safety problem and there is no other feasible alternative that would provide public safety and where the development mitigates for impacts to public access.
- 4) Inconsistency with IP Section 21.30A.050(E)(3)), which requires the protection of “public parking that supports public access” and mitigation consisting of an equivalent quantity of public parking nearby..
- 5) The City’s approval authorizes the program for 18 month period with a 60 day review period to determine whether the program results in public access impacts. However, the

City must determine whether the project would have impact on coastal access *before* approving any parking restriction, not after-the-fact. The current demand for public parking in this neighborhood demonstrates that new “No Parking” restrictions would negatively impact coastal access.

- 6) The City argues that the public does not park in this neighborhood for coastal access, rather, parking is mainly by employees and patrons of the nearby commercial areas of Lido Marina Village, Lido Plaza, and Lido House Hotel. However, visitation of this coastal visitor-serving commercial area adjacent to beach areas is a form of public access and it would be impacted by the new “No Parking” restriction.

III. LOCAL GOVERNMENT ACTION

On December 13, 2018, the City of Newport Beach Zoning Administrator approved Coastal Development Permit No. CD2018-102 after a public hearing. The Zoning Administrator conditionally approved Local CDP No. CD2018-102 and adopted Resolution No. ZA-2018-136 (**Exhibit 4**) adopting findings in support and conditions of approval. A CEQA Class 3 (Existing Facilities) Categorical Exemption was adopted by the City.

Prior to the December 2018 Zoning Administrator’s public hearing and approval, the City conducted three noticed community meetings on June 29, 2017, March 26, 2018, and October 1, 2018 for public input from residents and property owners of the study area. Additionally, the City mailed a survey ballot to residents and property owners in the summer of 2018 and received 60% participation (160 responses out of a total of 268 ballots). Considering all 268 ballots, 47% of respondents support the preferential parking program and 12% oppose it; considering only the 160 ballots received, 79% support and 20% oppose the proposed preferential permit parking program.

The City approved the local CDP with eight conditions requiring, among other things:

- Six (6) short-term parking spaces (1 to 3-hour parking limit, unspecified) at six out of eight street ends as a means of mitigation against public access impacts to Newport Bay waters.
- Authorization of the program for an 18-month period only, periodic monitoring to gauge public access impacts. Parking regulatory signs installed as part of program to be removed at the end of the 18-month period.
- The City shall modify the program within 60 days if found to adversely impact public access or if there is significant spillover of parking into nearby neighborhoods. Modifications may include the use, or the reallocation of program revenue to mitigate impacts or consideration of reducing the allowable number of permits per household from a maximum of three permits to two or one permit per household, or apply a higher fee for households with multiple permits. The program shall be discontinued if the modifications to the program fail to alleviate the adverse impacts to public access or spillover effects.

The Coastal Commission’s South Coast District Office received a Notice of Final Action (NOFA) on January 8, 2019. The Commission issued a Notification of Appeal Period on January 10, 2019. On January 23, 2019, the last day of the ten (10) working day appeal period appeal, two appeals were filed, one by Mr. Jim Mosher and one by Commissioners Brownsey and Padilla (**Exhibit 3**). The City was notified of the appeals in a letter dated January 23, 2019.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)].

Section 30603 of the Coastal Act states in relevant part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and within 300 feet of the inland extent of any beach. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appealable area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no

substantial issue, the substantial issue question will be considered presumed, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. (Coastal Act Section 30604(b).) In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act. (*Id.* Section 30604(c).) Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

Qualifications to Testify before the Commission

If the Commission, by a vote of three or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City's record reflects that Mr. James Mosher submitted written testimony in opposition of the project at the local hearing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT DESCRIPTION AND LOCATION

The City-approved project is the establishment of a resident parking permit program (RP3), i.e., a residential preferential parking district in the Finley Tract on Balboa Peninsula, an R-2 (two-unit) residentially zoned. Single-family residences and duplexes characterize the surrounding area. The Finley Tract RP3 would restrict parking to only permitted vehicles 24-hours/day. The restriction would be imposed through the posting of signage restricting parking on public streets day and night in the subject area to “No Parking Anytime, Except by Permit” (**Exhibit 2**). Currently, the only limit for on-street parking in the subject area is the prohibition of parking once/weekly to allow for street sweeping/cleaning. The City estimates that there are 102 public on-street parking spaces within the subject area. As approved by the City, a maximum of three annual permits per household could be purchased at \$17/each. These permits would not be available for purchase by anyone other than residents of the Finley Tract RP3. If all 192 units in the Finley Tract were to purchase the maximum available three permits each, there would be 576 permits for approximately 100 parking spaces in the subject area, which is nearly 500 parking spaces beyond the area's capacity.

The Finley Tract is a triangle-shaped area bound by Newport Blvd., a commercial street providing visitor-serving commercial uses, and Rivo Alto and Rialto, two channels providing access to Newport Bay waterfront and waterways. Public access to the waterfront is available at eight (8)

street ends within the Finley Tract, providing both visual and physical public access to Newport Bay. Additionally, there are publicly leased shore moorings located in the bay channels at three of these public street-ends. The nearest public access to the ocean and public beaches is available nearby, less than a quarter mile south of the Finley Tract at the 32nd Street end.

The Finley Tract specifically includes Finley Ave., Clubhouse Ave., Short St. and the 500-600 blocks of 34th, 35th, and 36th Streets on Balboa Peninsula in Newport Beach (**Exhibit 1**). This residential neighborhood has approximately 102 on-street parking spaces. It is located westward and adjacent to retail shops and restaurants on Newport Blvd. and the commercial areas of the Lido Marina Village, Via Lido Plaza and the Lido House Hotel. The general perception as described in the City’s staff report is that recent renovations have revitalized the Lido Marina Village commercial area; and that this renewed public interest in the visitor-serving commercial area has increased parking demands on the nearby residential public streets.

The City’s staff report and Resolution No. ZA2018-136 proposes to provide a short-term parking space (i.e., 1-hour to 3-hour parking limit, 8am – 10pm, Daily) at six out of eight public street ends which provide public access to Newport Bay channels within the tract. Thus, six out of 102 on-street parking spaces would remain available to the public, albeit not without time restrictions (no parking between 10pm and 8 am), which currently do not exist.

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Newport Beach Local Coastal Program was certified in 2017. The City’s LCP is comprised of a Land Use Plan (LUP) and the Implementation Plan (IP) portion of the LCP is Title 21 of the City’s Municipal Code. The standard of review for this appeal is the City’s certified LCP and the public access and recreation policies of the Coastal Act.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has considered the following factors.

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,

5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government is the development’s conformity with the policies of the certified LCP and with the public access policies of the Coastal Act. The appellants raise several substantial issues discussed in further detail below. Therefore, staff recommends the Commission find that a substantial issue exists with respect to the grounds on which the appeals have been filed pursuant to Section 30603(a) of the Coastal Act.

Appellants Arguments: Inconsistency with LUP Policy 3.1.6-1.

LUP Policy 3.1.6-1 states, *“Prohibit the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.”* The appellants, Mr. Mosher and Commissioners Brownsey and Padilla, contend that the proposed Finley Tract RP3 will reduce the public’s ability to access the coast and coastal resources by restricting the use of free public parking currently provided on public streets. Page 9, paragraph 3 of the City’s staff report reads: *“Restricting general public parking in the Tract could directly affect public access even though the public typically does not visit the area in ways ocean facing beaches or public parks are visited.”* The City imposed five special conditions to ensure no direct impact to public access and to find the proposed RP3 consistent with LCP requirements, including:

- 1) A single, short-term (1-Hour to 3-Hour Limit) parking space to remain available to the general public (i.e., no resident parking permit required) at six locations at street ends with harbor channel access.
- 2) A limited authorization period of 18-months to allow for monitoring of any impacts to public access with a six-month review report to determine if impacts have occurred.
- 3) A process for modifying the Finley Tract RP3 program if adverse impacts to public access or significant spillover into nearby neighborhoods are determined, and discontinuance of the program if modifications fail to alleviate the adverse impacts to public access.
- 4) The possibility of reducing the number of permits per household or adopting a progressively higher fee schedule for households with multiple permits if adverse impacts to public access occur.
- 5) Removal of all RP3 signage at the end of the 18-month period or earlier date if program terminated early.

The proposed parking restriction of “No Parking Anytime, Except by Permit” for all but six of the 102 on-street parking spaces, which are currently available to the public without any restrictions, would effectively exclude the public from access to nearly 95% of the on-street

parking spaces on public streets adjacent to visitor-serving commercial areas and adjacent to Newport Bay channel waterways. Thus, the Finley Tract RP3 would take away the public’s ability to use on-street public parking in direct conflict with LUP Policy 3.1.6-1, which states that the City shall “*Prohibit the establishment of new preferential parking districts in the coastal zone except where such restrictions would not have a direct impact to coastal access, including the ability to use public parking.*” The City’s Special Condition 1 to keep six out of 102 on-street parking spaces available to the general public (between the hours of 8am to 10pm) would not be sufficient to avoid a direct impact to overall coastal access to channel waterways or to the adjacent visitor-serving commercial areas. Furthermore, the City’s Special Condition 2 limiting the program to 18-months only allows for modifications to the program if an adverse public access is identified after six months as a means to mitigate against “possible” public coastal access impacts and is misguided. The City must first determine whether the project would have an impact on coastal access before approving any parking restriction, not after-the-fact as it has done in this case. The current use of the area for public parking demonstrates that the area is used by the general public for parking and thus, a new “No Parking, Anytime” restriction would directly impact coastal access by denying the public use of nearly 95% (96 parking spaces) of parking spaces currently available to the public without any restrictions.

Therefore, the Commission finds that the program’s resulting reduction in public parking opportunities in the Finley Tract raises a substantial issue regarding conformity with the certified Newport Beach LCP, specifically, LUP Policy 3.1.6-1.

Appellant’s Argument: The proposed Finley Tract RP3 is inconsistent with IP Section 21.30A.050(E)(2) and IP Section 21.30A.050(E)(3).

IP Section 21.30A.050(E)(2) states:

Public Parking Restrictions Prohibited. Restrictions on public parking (e.g., the posting of “no parking” signs, painting curbs red, installation of physical barriers, etc.), shall be prohibited.

a. **Exception.** Where there is substantial documented evidence of a public safety problem, the reviewing body may waive this standard where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.

b. **Mitigation.** Development that results in restrictions on public parking shall provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.

IP Section 21.30A.050(E)(3) states:

Protection of Existing Public Parking. Existing public parking that supports public access shall be protected. Any development that results in a reduction of public parking supporting public access shall provide an equivalent quantity of public parking nearby as mitigation.

Additionally, as the proposed preferential parking district is within the first public road and the

inland extent of the sea, the following public access and recreation provisions of the Coastal Act also apply:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in part:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (2) *Adequate access exists nearby, or,*

IP Section 21.30A.050(E)(2) prohibits restrictions on public parking, the only exception is where there is substantial documented evidence of a public safety problem *and* where no other feasible alternative exists to provide public safety and where an equivalent quantity of public parking is provided nearby as mitigation for impacts to coastal access. The City was not able to provide evidence of a public safety problem, much less evidence that there are no other feasible mechanisms for providing for public safety. Page 9 of the City’s staff report states: “*While there are no public safety issues in this case, strictly applying the prohibition in all other instances would conflict with the CLUP policies allowing the creation of preferential parking zones when impacts to public access are avoided and/or mitigated.*” As discussed in the section above, the proposed RP3 includes an absolute restriction of “No Parking, Anytime,” with or without a resident preferential parking zone, which would have an immediate and direct impact to coastal access, including the ability to use existing public parking.

In addition, the City did not adequately mitigate the displaced on-street public parking that would no longer be available to coastal visitors as a result of the approved preferential parking program. The local action prohibits all public parking without a permit in an area where on-street parking had been open to the public and unrestricted. Although the City-approved action would set aside and make available to the public six designated parking spaces, this is a small fraction of the parking previously available to the public and does not provide an “equivalent quantity of public parking nearby.”

Furthermore, IP Section 21.30A.050(E)(3) requires existing public parking supporting public access to be protected. City staff conducted general parking occupancy surveys within the study area on four separate dates in May, June, July and August of 2017 that indicated overall occupancy ranged between 92% and 125% (it also accounted for vehicles parked in driveways). However, only six to seven non-resident vehicles were parked in the morning hours and 0 to 20 non-resident vehicles were parked in the evening hours. Thus, the City’s surveys confirmed that the area is used by non-residents, which suggests that the area is used for public access to the coast. At the same time, although occupancy rates were high, according to the City’s survey, the high numbers are reflective of local residents parking on-street and not due to a high number of visitor parking.

Thus, the Finley Tract RP3 is unlikely to remedy the purported shortage of on-street parking. For example, there are 192 dwelling units in the Finley Tract. If the City were to issue the maximum

number of preferential permits per household (three), there would be a total of 576 parking permits issued to residents for the exclusive use of 96 of the 102 parking spaces, or nearly 95% of the on-street parking in this area of the coast, which the City itself determined to be used mostly by residents anyway. Therefore, the establishment of a preferential parking district with a “No Parking, Anytime, Except by Permit” restriction would do little to alleviate the current use of on-street parking by residents, who, according to the City, already compete with each other for the available on-street public parking spaces. But the City-approved parking restrictions would greatly impact the availability of existing public parking supporting public access to the Newport Bay waterfront in the neighborhood and supporting public access to coastal waters and the nearby visitor-serving commercial area.

The City asserts in its staff report that a recent revitalization of the Finley Tract adjacent visitor-serving commercial areas of the Lido Marina Village, the new Lido House Hotel, and the Via Lido Plaza has increased parking demands that exceed the available parking supplies at times. Despite low numbers of non-resident parking in the Finley Tract, occupancy rates are high, and residents complain to the City that their quality of life is negatively impacted; to address resident concerns according to the City staff report, the City worked with both the Lido Marina Village and the Lido House Hotel to implement parking management plans to avoid and minimize parking conflicts through the implementation of on-site valet parking for patrons, reduce the cost of on-site employee parking and provide an employee shuttle service to an off-site parking structure. According to the City’s findings, these measures have helped reduce parking in the residential Finley Tract from coastal visitors. Furthermore, use of available on-street public parking spaces by visitors of the nearby visitor-serving commercial area is a type of public access protected by the Coastal Act. Maintaining parking spaces in the Finley Tract open and available to the public is necessary to protect public access to the coast and coastal resources such as visitor-serving commercial uses. Therefore, the Commission finds that the project raises a substantial issue regarding conformity with the IP portion of the LCP.

Appellant Argument: An LCP Amendment is necessary to establish Resident Preferential Parking Program (RP) regulations in the Implementation Plan (IP) prior to City issuance of a CDP for the establishment of a new RP.

LUP Policy 3.1.6-2 states: “Require a coastal development permit to establish new, or modify existing, preferential parking districts.” Mr. Mosher acknowledges that per this LUP Policy, new preferential parking districts in the coastal zone require a CDP. However, Mr. Mosher contends that a program allowing the City to grant such CDPs has not yet been certified by the Commission and that an LCP amendment is necessary to establish such a program in the IP before the City may begin issuing CDPs for preferential parking districts in the coastal zone. As approved by the City and described above, the local CDP is not consistent with the preferential parking policies of the certified LCP. In this case, the City must first process an LCP amendment with the Commission to adopt regulations for the establishment of preferential parking districts in the IP portion of the LCP. Therefore, the Commission finds that the City’s approval of the local CDP is not consistent with the current policies of the certified LCP and thus raises a substantial issue.

SUBSTANTIAL ISSUE FACTORS:

Applying the five factors typically relied upon by the Commission in making a determination whether an appeal raises a substantial issue or not confirms that the appeal does raise a “substantial issue” per Section 30625(b)(2).

1. The degree of factual and legal support for the local government’s decision that the development is consistent with the relevant provisions of the Coastal Act.

The City did not substantially support its approval of the project’s consistency with all of the applicable policies of the certified LCP and the public access and recreation provisions of the Coastal Act. In fact, as described above, the City’s action is not consistent with the policies of the certified LCP or with the public access and recreation policies because the City did not demonstrate that there is a public safety concern that requires the City to restrict public parking in the subject area, as required by the LCP; the City did not adequately mitigate the loss of the public parking spaces with an equivalent number of public parking spaces in a nearby area, as required by the LCP; and the City did not process an LCP amendment, which would need to be approved by the Commission in order to establish policies which would make a preferential parking district, such as the locally-approved project, consistent with the policies of the certified LCP. Furthermore, the project, as approved by the City, is not consistent with the public access and recreation policies of the Coastal Act because it severely limits the public’s ability to use existing, unrestricted public parking facilities by making only six restricted use (8am-10pm) parking spaces available to the public out of 102 existing, unrestricted parking spaces, without proportional mitigation for the loss of nearly 95% of the public parking spaces in this area. Therefore, the City did not provide an adequate degree of factual and legal support for the local government’s decision.

2. The extent and scope of the development as approved or denied by the local government.

The local government granted a Local CDP for the proposed new development, a residential preferential parking district (RP3) on the Finley Tract on the Balboa Peninsula, a triangle-shaped area with approximately 102 unrestricted on-street parking spaces bounded by Newport Bay channels on two sides and Newport Blvd., a commercial street providing visitor-serving commercial uses. This is the first CDP approval for a resident preferential parking district in the coastal zone since certification of the LUP and the IP.¹ As approved by the City, the parking restriction would completely prohibit existing on-street public parking at all times, day and night, and provide only six parking spaces for public use (for 1 – 3 hours between 8am and 10pm only) in an area that provides access to Newport Bay waterfront and waterways and to nearby visitor-serving commercial uses. In its action, the City is eliminating nearly 95% of available public parking in this area of the coast and limiting the use of the remaining six parking spaces, which would only be available to the general public for 1 – 3 hours between 8am and 10pm, but could potentially also be used by residents in the neighborhood, which could essentially eliminate all public on-street parking in this area of the coast thereby virtually privatizing access to coastal waters in this neighborhood. Thus, the extent and scope of the approved development is substantial and has not been narrowly tailored to limit impacts to coastal resources.

3. The significance of the coastal resources affected by the decision. The Coastal Act mandates the protection of public parking facilities that provide access to coast. Public parking that supports access to coastal waters is a significant coastal resource by providing direct (or in some cases, indirect) access to the shoreline and to coastal waters. In this case, the City would eliminate all but six of the existing 102 public, on-street, unrestricted parking spaces and the six that would be available to the public would only be available to the public for 1 – 3 hours between 8am and 10pm, where currently there is no parking restriction. In addition, there is no enforceable mechanism in the local CDP which would ensure that the

¹ There is only one other residential preferential parking district in the coastal zone--it is located on Newport Island and it was established in 1982. There is no record of a CDP for the Newport Island resident preferential parking district.

six remaining public parking spaces would not be used by the residents of the neighborhood. In this case, the City's action has the potential to eliminate public access to coastal waters in this area of the coast, thereby essentially privatizing access to coastal waters in this neighborhood. Therefore, the Commission finds that the coastal resources affected by the City-approved CDP are significant and the City's action on the local CDP raises a substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP. Allowing the local government's decision to approve a new "No Parking, Anytime, Except by Permit" resident preferential parking district in an area within the coastal zone with access to Newport Harbor waterfront and waterways and to nearby visitor-serving commercial uses would set a negative precedence for future interpretations of the City's LCP. In addition, allowing the City to proceed with the City-approved development would set a precedent for allowing permit/resident-only parking areas seaward of the first public road and in popular coastal areas. The implementation of resident-only parking restriction on one street could result in an increase of use on the adjacent streets, which could lead to additional requests for residential-only parking restrictions. Public parking is explicitly called out as a significant resource to be protected under the Coastal Act (Coastal Act section 30212.5). As such, the City's approval directly contradicts the public access policies of the Coastal Act. Furthermore, if the subject local CDP is found to be consistent with the LCP based on the current record, there is a potential that future City-issued CDPs for preferential parking districts within the coastal zone, but outside of the appeal area, will reference and rely on this permit. Allowing the City's local CDP approval to stand would result in adverse precedence regarding application of the LCP's various resource protection policies (specifically, relating to public parking as a public access resource). Therefore, as approved by the City, the local CDP would set a bad precedent for future interpretations of its LCP and raises a substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

The protection of existing public parking on public rights-of-ways for coastal access, especially in between the first public road and the sea, is an issue of statewide significance, given that opportunities for free, unrestricted parking that supports public access to waterfront areas and visitor-serving commercial areas is important statewide and not just in Newport Beach. Requiring consistency with the certified LCP (particularly policies relating to public parking as a public access resource) and the public access and recreation provisions of the Coastal Act is significant to all the people of California who wish to enjoy the coast of California. Unsubstantiated and erroneous application of these policies could have regional or statewide ramifications regarding other similar LCPs and their policies regarding public parking facilities that are located in between the first public road and the sea and that also provide direct public access to coastal waters. Therefore, the Commission finds that the appeals raise significant local, regional, and statewide issues and therefore raise a substantial issue.

In conclusion, staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.

Appendix A – Substantive File Documents

1. City of Newport Beach certified Local Coastal Program